

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

December 2, 2014

Opinion No. 14-102

Supermajority Voting Requirement

QUESTIONS

1. With respect to a local board of education, Tenn. Code Ann. § 49-2-202(g) provides that “[a] majority of the members constituting the board, and not merely a majority of the quorum, shall be required to transact all business coming before the board in regular or special meetings.” Assume a nine-member local board of education hires a school superintendent and approves the superintendent’s employment contract by a vote of five to four. A provision of that contract provides that the superintendent may be terminated only upon the vote of two thirds of the board’s members, that is, six members. Does the supermajority contract provision override Tenn. Code Ann. § 49-2-202(g)?

2. Is a subsequent school board of newly-elected members bound by the supermajority contract provision?

OPINIONS

1. A board of education may not, by contract, limit its statutory decision-making authority by requiring a supermajority vote to approve termination of a director of schools when the statute provides for termination by majority vote.

2. No. The supermajority voting requirement is unenforceable.

ANALYSIS

1. Contract provision requiring Supermajority Vote

This opinion concerns a school superintendent’s employment contract. Local boards of education are established and governed under Tenn. Code Ann. §§ 49-2-201 to -211. The number of members of a board of education may vary according to private or general law. Tenn. Code Ann. § 49-2-201(a)(1). Tenn. Code Ann. § 49-2-202(g) provides:

A majority of all of the members constituting the board, and not merely a majority of the quorum, shall be required to transact all business coming before the board in regular or special meetings.

Duties and powers of these boards are listed in Tenn. Code Ann. § 49-2-203. Under section (a)(14)(A) of this statute, a board of education is authorized to employ a director of schools under a written contract of up to four years' duration, which may be renewed. No school board may terminate the director's employment contract or remove the director from office without giving notice at least fifteen calendar days before the scheduled meeting at which the action is to be taken. Tenn. Code Ann. § 49-2-203(a)(14)(C). This provision does not address the terms that may be included in the employment contract.

The questions posed assume a nine-member local board of education that approves an employment contract for its director of schools. Under the contract, the director's employment can only be terminated by a vote of two-thirds of the members of the board, or six votes. The board approved the contract by the majority vote required under Tenn. Code Ann. § 49-2-202(g), or five votes.

The first question is whether the contract provision requiring a supermajority vote overrides the statute providing that only a majority vote of the members is necessary to conduct business. The Tennessee Court of Appeals has held that a county commission may not adopt a supermajority voting requirement to approve a matter that, under a state statute, it may approve by a majority vote. *Shelton v. Rutherford County* No. M2008-02596-COA-R3-CV, 2009 WL 3425638 (Tenn. Ct. App. October 23, 2009), (permission to rehear denied (2009)), (no perm. app. filed). In that case, a statute authorized counties to amend a zoning ordinance by a majority vote of the entire membership of the county commission. A county commission adopted a zoning resolution providing that, where twenty percent of neighboring property owners submitted petitions opposing an amendment, a two-thirds vote of the commission members would be required to approve it. The Court found this requirement inconsistent with the zoning statute explicitly authorizing the commission to amend a zoning ordinance by a majority vote. The Court noted that, even if this specific statute did not apply, the general law requiring a majority vote for all business before the commission required the same result. The Court cited, in comparison, other statutes which did expressly impose a supermajority voting requirement for a county commission to approve specific decisions.

In this case, a local board of education has imposed a supermajority limit on its decision-making authority by a contract rather than by resolution, rule, or ordinance. But the same principles apply. State statutes expressly provide that a local school board shall transact all business coming before it by a vote of a majority of all the members. We have found no statute imposing any supermajority voting requirements on a board of education. Accordingly, a board of education may not, by contract, limit its statutory decision-making authority by requiring a supermajority vote to approve termination of the contract. *See, e.g., Taylor v. The Town of New Chicago*, 839 N.E.2d 212 (Ind. Ct. App. 2005), transfer denied (Ind. 2006). In that case, the Indiana Court of Appeals found that a town had exceeded its authority in adopting an employment contract for a chief of police that limited the town's

authority to terminate the contract. The contract provided that the chief of police could be removed only for “good cause” by a three-fourths vote of the town council and the city board of police. State law expressly authorized a town to remove a police chief by a majority vote without notice, hearing, or good cause. The Court found that the town could not, by contract, bargain away this statutory authority.

2. Binding Effect of Contract Provision requiring Supermajority Vote

The second question is whether a newly-elected board of education would be bound by the supermajority voting requirement in the contract. For the reasons discussed above, this contract provision is unenforceable.

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